

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FERNANDO GASTELUM,

Plaintiff,

v.

PETCO ANIMAL SUPPLIES STORES,  
INC.,

Defendant.

Case No. 1:22-cv-00792-BAM

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT AS MOOT**

(Doc. 5)

Plaintiff Fernando Gastelum, proceeding pro se, filed the instant action on June 27, 2022. (Doc. 1.) Defendant Petco Animal Supplies Stores, Inc. filed a motion to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) on September 12, 2022. (Doc. 5.) The motion is set for hearing before the undersigned on November 4, 2022. (*Id.*) Plaintiff responded to defendant's motion by filing a first amended complaint on September 23, 2022. (Doc. 12.)

Federal Rule of Civil Procedure 15(a)(1) permits a party to amend its pleading once as "a matter of course" within 21 days after service of a responsive pleading or a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1)(B). An amended complaint properly filed while a motion to dismiss is pending generally moots the motion to dismiss. *See, e.g., Williamson v. Sacramento Mortg., Inc.*, No. S-10-2600 KJM DAD, 2011 WL 4591098, at \*1 (E.D. Cal. Oct. 11, 2011); *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir.

2015) (finding that where a motion to dismiss targets a complaint that has been superseded by an amended complaint, court should deem the motion to dismiss moot). Plaintiff timely filed an amended complaint as a matter of course within 21 days of defendant's Rule 12(b) motion. Plaintiff's first amended complaint is now the operative complaint and defendant's motion to dismiss the original complaint has been rendered moot. Defendant's motion to dismiss is therefore DENIED as moot. Defendant may file a renewed motion to dismiss, if appropriate, plaintiff's first amended complaint.

IT IS SO ORDERED.

Dated: October 4, 2022

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE